AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 350.

J. B. PLUMB, PLAINTIFF IN ERROR,

vs.

GEORGE CRANE, ADMINISTRATOR OF EDWARD K. GOODNOW, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA

RECORD FILED OCTOBER 7, 1885.—AGREED RECORD FILED OCTOBER 5, 1887.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 7, 1887.

1 *Appellant's Abstract of Record.*

Supreme Court of Iowa. October Term, Dubuque, A. D. 1883. In Equity.

EDWARD K. GOODNOW *vs.* JOSIAH B. PLUMBE.

Appeal from the Webster district court.

George Crane, for appellant; Theo. Hawley, for appellee.

On the 5th day of August, 1876, plaintiff filed his petition in said district court of Webster county stating his cause of action as follows:

Par. 1st. The said Edward K. Goodnow, plaintiff herein, respectfully represents unto this court that the Iowa Homestead Company i a corporation duly organized and existing under and by virtue of the laws of the State of Iowa; that in or about the year A. D. 1863 the homestead company received from the Dubuque and Sioux City Railroad Company, a corporation also existing under and by virtue of the laws of Iowa, a deed, duly signed, executed, and delivered by said railroad company, purporting to convey in fee simple, absolute to the said homestead company, the following-described real
2 estate—that is to say: N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, section three (3), township eighty-seven (87), range twenty-eight (28); S. E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ S. W. $\frac{1}{4}$, section thirty-five (35), township eighty-nine (89), range twenty-seven (27); N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, section nine (9), township eighty-seven (87), range twenty-seven (27), all of Webster county, a copy of which deed, marked Exhibit "A," is hereto annexed and made a part of this petition.

Par. 2d. Plaintiff further avers that from and after the execution and delivery of said deed as aforesaid till the year A. D. 1873 the said homestead company honestly and in good faith believed that it was the absolute owner of and held a good and valid title to the lands aforesaid, but in the year A. D. 1873 the Supreme Court of the United States, in a suit therein pending for the purpose of testing the right and title of said homestead company to said lands, decided finally that said company was not the owner thereof and never had any right or title thereto, since which time said company has not claimed to be the owner of said land.

Par. 3d. Plaintiff further avers that during the continuation of such belief and claim of ownership the said homestead company gave or delivered over to Webster county, a municipal corporation organized and existing under the laws of the State of Iowa, and within whose territorial limits said lands are situated, the taxes duly assessed and levied by said county upon said lands—that is to say, the following amounts for the following years respectively:

For the year 1864	$130 25
For the year 1865	150 15
For the year 1866	165 70
For the year 1867	135 20
For the year 1868	140 80
For the year 1869	160 20
For the year 1870	171 85
For the year 1871	181 10

3 And took from said county receipts showing the amounts so handed over to said county.

Par 4th. Plaintiff further avers that the taxes so assessed and levied by said county on and against said lands became and were a valid and binding lien thereon in favor of said county, which lien was paramount to all other liens and incumbrances thereon; that long prior to the assessment and levy of said taxes upon said lands the said Josiah B. Plumbe, defendant herein, became and was the real owner thereof, and ever since has been such owner, but of the said defendant's said ownership said homestead company had no knowledge or notice at the time of receiving the deed therefor, nor till about the year 1873, long after the payment of said taxes.

Par. 5th. Plaintiff further avers that said defendant has never paid to said county the taxes aforesaid or any part or parcel thereof.

Par. 6th. Plaintiff further avers that said county has always hitherto refused and still refuses to refund to said homestead company or its assigns the taxes so given or delivered over to said county by said homestead company, as hereinbefore alleged, and said county has always hitherto refused and still refuses to take any steps whatever to collect the aforesaid taxes from the said defendant or any part thereof.

Par. 7th. Plaintiff further avers that said county has the legal right and power and is in duty bound to collect the taxes aforesaid from the defendant, who was the legal owner of said lands at the time said taxes were levied against the same, and was justly bound to pay the said taxes to said county.

Par. 8th. Plaintiff further avers that the said Iowa Homestead Company has assigned, transferred, and set over to the said plaintiff all right, title, claim, demand, or cause of action, either in law or equity, which said company may have had against said Webster county or against the said defendant, or any other person,

4 on account of or by reason of the payment to said county of the aforesaid taxes. A copy of said assignment is hereto annexed, marked Exhibit B, and made a part of this petition.

Par. 9th. Wherefore plaintiff prays that an account be taken of the amount of taxes that defendant should pay, and that a decree for the amount so found to be due be entered up against said defendant in the name of the plaintiff or in the name of said Webster county for the use and benefit of plaintiff, and made a lien upon the lands hereinbefore described; that said lands be ordered to be sold to pay off said decree, and that plaintiff have such other and

further relief in the premises as equity and good conscience may require and to this court may seem meet.

GEORGE CRANE,
Attorney for Plaintiff.

On the second day of April, 1878, the county of Webster filed a pleading denying each and every allegation contained in the petition and averring that all said taxes were paid voluntarily.

Afterwards, in March, 1879, the plaintiff filed an amendment to his petition in the words and figures following:

And now comes the plaintiff, E. K. Goodnow, and, by way of amendment and addition to his petition heretofore filed, says:

1st par. That the taxes mentioned in plaintiff's original petition were duly levied and assessed by the said Webster county against the lands of defendant at the times and in the manner and form therein alleged.

2d par. That at the time that plaintiff's assignor gave or delivered to said county the taxes aforesaid it was agreed and understood that if the said county should receive or collect the said taxes of and from the said defendant that the said county would repay the taxes so collected to plaintiff's assignor.

3d par. Plaintiff further says that before the levy and assessment of said taxes the said defendant was and has been continuously ever since then a non-resident of the State of Iowa.

4th par. Plaintiff further says that it was also agreed and understood that said county would sue defendant in its own name for the taxes mentioned in said petition, and in case it should collect the same would pay them to plaintiff's assignor.

5th par. Plaintiff further says that if said defendant refuses to pay said taxes to said county and claims that said taxes have been paid to said county through or by means of the plaintiff's having given or delivered the same to the county, then said defendant is bound to repay the same to plaintiff.

Wherefore the plaintiff asks the relief in the premises heretofore prayed for, that a decree be entered in the name of said county against said defendant for one thousand dollars and interest, and be made a lien on the lands described in the petition, and for such other and further relief as equity and good conscience may require.

GEORGE CRANE,
Attorney for Plaintiff.

Afterwards, in March, 1879, the county of Webster filed a petition in the words and figures following:

And now comes the said Webster county, a party to the above-entitled suit, and, as a substitute for the pleadings heretofore filed therein, pleads as follows—that is to say, the said county now comes and claims the benefit of the commencement of this suit by the said plaintiff and asks a decree or judgment against the said Josiah B. Plumbe, the defendant, as prayed for in plaintiff's said petition.

Said county further says that the taxes mentioned in said petition were duly and legally assessed and levied by said county upon the lands therein mentioned, at the times, for the years and amounts, and in the manner and form alleged and set forth in said petition,
6 and that said taxes at the times of the said several assessments became and still are a valid and binding lien upon said lands in favor of said county; that at the times aforesaid, and at the commencement of this suit, the said Plumbe was the owner in fee of the said lands and was in duty bound to pay said taxes to said county.

Said county further says that, at and before the assessment aforesaid, the said Plumbe was and has been continuously ever since a non-resident of the State of Iowa.

Said county further says that said taxes have never been paid or any part thereof, and that said defendant Plumbe has never paid said taxes to said county or any part thereof; on the contrary, the whole thereof are still due to said county from the said defendant.

Wherefore the said county asks for a decree or judgment against the said Plumbe for the sum of one thousand dollars and interest thereon, being the amount of taxes due said county as above set forth, and that said decree be made a lien upon the lands described in said petition, and that said county have such other and further relief in the premises as equity and good conscience may require.

J. F. DUNCOMBE,
Attorney for County.

Afterwards the defendant filed the following answer to the petition of the said county of Webster:

Par. 1st. And now comes the defendant, Josiah B. Plumbe, and, for answer to the pleading or petition filed by the said county of Webster in this suit, says that said county is not a party plaintiff on the record and is not entitled to ask for any relief in the character of plaintiff in this suit, and has no legal right to take advantage of or claim any benefit from the commencement of this suit by the said Edward K. Goodnow.

Par. 2d. Said defendant, further answering, denies each and every allegation in said pleading or petition contained.

7 Par. 3d. Said defendant, further answering, says that all of said taxes mentioned in said petition were duly paid and satisfied to said county by the said Iowa Homestead Company as soon as the same became due, and the said defendant is no longer liable therefor.

Par. 4th. Said defendant, further answering, says that if said county ever had any right or cause of action against defendant for the recovery of said taxes or any part thereof such cause of action arose or accrued to said plaintiff more than five years before the commencement of this suit, and is, therefore, barred by lapse of time.

Par. 5th. Said defendant, further answering, says that said Iowa Homestead Company paid said taxes to said county voluntarily and without the request, knowledge, or consent of the defendant and with full knowledge of the facts and circumstances upon which

defendant's claim of title to said lands was founded. Wherefore defendant asks to be dismissed with his costs and charges.

D. B. HENDERSON,
Attorney for Defendant.

Afterwards the defendant filed an answer to the petition of Edward K. Goodnow in the words and figures following:

Par. 1st. And now comes the defendant, Josiah B. Plumbe, and for answer to the original petition of plaintiff, Edward K. Goodnow, and the amendment thereto, denies each and every allegation therein contained.

Par. 2d. Said defendant, further answering, says that if said plaintiff ever had any right or cause of action against defendant for the recovery of said taxes or of any sum of money on account or by reason of the plaintiff's having delivered or paid said taxes to said county such cause of action arose or accrued to plaintiff more than five years before the commencement of this suit, and is, therefore, barred by the lapse of time.

8 Par. 3d. Said defendant, further answering, says that the said homestead company paid said taxes to said county voluntarily and without the request, knowledge, or consent of the defendant and with full knowledge of all the facts and circumstances upon which defendant's claim of title to said lands was founded. Wherefore defendant asks to be dismissed with his reasonable costs and charges.

D. B. HENDERSON,
Attorney for Defendant.

Afterwards the defendant filed an amended answer as follows:

Comes now the defendant and, by leave of court first had and obtained, amends his answer herein and alleges—

That an action in which the said homestead company, the assignor of plaintiff, was plaintiff and the Des Moines Navigation and Railroad Company and the defendant and others were defendants, commenced in the district court of Webster county, Iowa, and finally determined in and by the Supreme Court of the United States, the said homestead company, prior to the date of the alleged assignment of said alleged cause of action in the petition, asserted and maintained, among other things, the right to recover of the defendants therein the said taxes the recovery of which is sought for herein; that one of the issues made by the pleadings in said cause and determined by the proofs in said action was as to the right of said homestead company to recover the same identical taxes sought to be recovered in this action, and that it was in said action determined, adjudged, and found by said Supreme Court of the United States, at the December term thereof for 1872, that the said homestead company was not entitled to recover said taxes or any part thereof, which said determination and judgment has never been in any manner set aside, vacated, or modified, but the same remains and still is in full force and effect.

Afterwards defendant filed the following answer, to wit:

The defendant, for answer to the petition of plaintiff, says—

1. He denies each and every allegation contained in the first paragraph of said petition.

2. Further answering, defendant denies that from the year 1863 till the year 1873, or during any of said period, the said homestead company honestly and in good faith believed that it was the absolute owner of and held a good and valid title to the lands mentioned in said petition or any part or portion thereof; defendant admits that in the year 1873 the Supreme Court of the United States, in a suit therein pending for the purpose of testing the right and title of said homestead company to the lands in said petition described, decided finally that said company was not the owner thereof and never had any right or title thereto.

3. Defendant denies each and every allegation contained in the third and fourth paragraphs of said petition, except as herein admitted.

Defendant admits that prior to the year 1863 he became and was the owner of the said lands and ever since has been and now is such owner, and says that during all of the time said homestead company is alleged to have paid taxes on said land the said homestead company had knowledge of the ownership of said lands by defendant.

4. Defendant denies each and every allegation in the fifth, sixth, seventh, and eighth paragraphs of said petition.

5. Defendant, further answering, avers that said homestead company, by said alleged conveyance from the Dubuque and Sioux City Railroad Company, purchased the entire land grant inuring to the said Dubuque and Sioux City Railroad Company made by the Congress of the United States to the State of Iowa in trust to aid in building said line of railroad in the State of Iowa, and if the lands in plaintiff's petition described were included in said conveyance the same were included without any honest belief or reason upon the part of either of said companies to believe that said lands of defendant were a part or portion of said grant; and defendant avers that the Dubuque & Sioux City Railroad Company had made applications to the proper officers of the United States as early as the — day of ——, urging and requesting that said lands be certified to the State of Iowa as part of the grant for railroad purposes made in 1856, but the agents of the said company were officially advised, by the proper officers of the Land Department of the United States, that said lands were not a part of said grant of 1856, and certificates were refused therefor until, after persistent efforts upon the part of the officers and agents of the said Dubuque and Sioux City Railroad Company, the Department was induced to certify said lands, under said grant of 1856, which said certificate was not approved by the Secretary of the Interior until the seventh day of April, 1863, and certified by the Commissioner of the General Land Office on the eleventh day of April, 1863.

6. Defendant further avers that on the ninth day of December, 1866, and prior to the payment of any of the taxes upon said lands by the homestead company, the Supreme Court of the United States delivered its opinion in the case of Wolcott *vs.* The Des Moines Navi-

gation and Railroad Company, reported in 5th Wallace's United States Supreme Court Reports, page 681, in which it was adjudicated and decided that all the lands certified to the State of Iowa under the act of Congress, approved August 8th, 1846, for the improvement of the Des Moines river and in the alternate odd-numbered sections within five miles of said river were reserved from the operations of said grant made to the State of Iowa by act approved May 15, 1836, for railroad purposes, and that neither the State of Iowa nor any of the railroad companies claiming under said act of 1856 took
11 any title to any portion of the lands in the alternate odd-numbered sections within five miles of the Des Moines river that had been certified to the State under the said act of August 8th, 1846; that the lands upon which plaintiff in his petition alleges the Iowa Homestead Company paid taxes were certified to the State as part of the grant of August 8th, 1846, for the improvement of the Des Moines river as early as the — day of ——, 18—, and that at the time said homestead company paid said taxes it had full knowledge of the fact of said certificates and of the refusal of the Department at Washington to certify said lands under the act of 1856 as inuring to the State for said railroad purposes, and also had full knowledge of the decision of the Supreme Court of the United States made in the case of Wolcott *vs.* The Des Moines Navigation Company, adjudicating that said lands inured to the State under the act of August 8, 1846, and the joint resolution of March 2, 1861, and were reserved from the operations of the act of Congress May 15, 1856, making a grant for said railroad purposes.

7. Defendant avers that the alleged payments made by the said homestead company of the said taxes were wholly voluntary; that said taxes were not assessed against said homestead company, and that the same were paid by said company without any demand or request therefor upon the part of said defendant or any one for him or by the county of Webster.

8. Defendant avers that the plaintiff is not the owner of the cause of actions upon which this suit is brought; that he has no right to maintain the same; that said alleged assignment of said cause of action by the homestead company to him is wholly fraudulent and void in this, that prior to the date of said assignment and the execution thereof the said Iowa Homestead Company had instituted its suit in the district court of Webster county, Iowa, against the grantor of defendant and others interested in lands belonging to what was well known as Des Moines river lands, of which the lands described in plaintiff's petition formed a part, and in the said suit of
12 the Iowa Homestead Company said company claimed to recover of the grantor of defendant the taxes so alleged to have been paid by it on the lands aforesaid, being the same moneys now sued for in this action; that said cause of action was duly removed to the circuit court of the United States in and for the district of Iowa, and upon a trial thereof upon the merits it was adjudicated that the said grantor of defendant was not liable for said taxes, and that the said homestead company were not entitled to recover the same; that upon appeal to the Supreme Court of the United States

the said cause was retried and judgment again rendered for defendant's grantors on said issues, and the said Supreme Court delivered its written opinion, declaring that said taxes were paid voluntarily, and that the said Iowa Homestead Company was not entitled to recover the same; that said homestead company, contriving to further harass and annoy the defendant and designing to institute another suit, but contriving to bring said suit in the local courts of the State of Iowa, without any other consideration made said alleged assignment to the plaintiff, who accepted the same knowing the wrongful and fraudulent purposes, and for no other consideration, whereby and by reason of the said fraudulent and wrongful consideration set, said assignment is against public policy and in fraud of the legal rights of this defendant, and the said Goodnow is not the legal or equitable owner of said demand and is not entitled to maintain this suit.

9. Defendant alleges that the county of Webster has no interest in this suit as plaintiff or defendant; that the taxes assessed against the lands in plaintiff's petition described for the years therein mentioned have been fully paid and the liens thereof fully discharged.

10. Defendants aver as a further defence that prior to the alleged assignment by the Iowa Homestead Company to the plaintiff
13 of the claims and demands set up in his petition herein the said Iowa Homestead Company brought its suit in the district court of Webster county, Iowa, upon the same cause of action set forth in plaintiff's petition, and claimed to recover of defendant's grantor the taxes paid on said real estate since the year 1861, alleging that said homestead company had paid all taxes levied and assessed upon said land since the year 1861 and prior to the year 1868, and that defendant's grantor was liable to reimburse and repay the same to said homestead company; that said cause was duly transferred to the circuit court of the United States for the district of Iowa and issue joined between the parties thereto, and the said grantor of defendant answered to the said petition of plaintiff, which was a bill on the chancery side of said court. The said cause was tried upon its merits, upon the evidence adduced and certain stipulations of facts signed by the parties to said suit, and the said bill of complaint was dismissed upon the hearing thereof, and it was then and thereby determined and adjudicated by the said circuit court that said taxes had been voluntarily paid by said homestead Co. and that the grantor of defendant was not liable therefor; that afterwards said homestead company appealed said cause to the Supreme Court of the United States, and said cause was retried upon the issues joined and upon the evidence and stipulation of the parties, and the Supreme Court aforesaid rendered final judgment thereon confirming the decree of the said circuit court of the United States and adjudicated that the said homestead company was not entitled to recover or have a decree for said taxes or the amount paid on account thereof and dismissed said bill of the said homestead company upon its merits; that said judgment and decree is still in full force and has never been set aside, modified, or reversed.

11. Defendant, further answering, avers that if said plaintiff or his

assignee ever had any right or cause of action against defendant for the recovery of said taxes or any part thereof said cause of
14 action arose and accrued to said plaintiff and his assignor more than five years before the commencement of this action, and that the same is now barred by the statute of limitation.

12. Further answering, defendant avers that the said several causes of action set up in plaintiff's petition herein accrued to the plaintiff and his assignor more than six years next before the commencement of this action, and that at all times since 1860 this defendant has been and now is a citizen and resident of Canada, and that by the law of Canada all causes of action based upon an express or implied promise not in writing are barred after the expiration of six years from the time when said causes of action severally accrued, and that the causes of action set up in plaintiff's petition are barred by the lapse of time under the laws of Canada.

15 Wherefore defendant prays judgment for the dismissal of petition of plaintiff and for costs.

THEO. HAWLEY,
Defendant's Attorney.

16 On March 13th, 1883, defendant filed the following amendment to his answer:

Comes now the defendant and, by leave of court first had and obtained, amends his answer herein and says that it is not true that the question of title and ownership of the lands described and mentioned in the petition herein, as between the assignor of plaintiff and defendant's grantor, was finally decided until 1873, and withdraws so much of his answer heretofore filed herein as, either expressly or by implication, admits that the same was then finally decided, and avers that the same was definitely and fully decided, at the Dec., 1866, term of the Supreme Court of the United States, in the cases of Wolcott against the Des Moines Navigation and Railroad Company and Burr *vs.* Same Company, reported in 5 Wallace, pages 681 and 689.

THEO. HAWLEY,
Defendant's Attorney.

Afterwards plaintiff filed replies denying each and every allegation contained in the defendant's answer.

The said county of Webster also filed a reply denying the allegations contained in defendant's answer, except the payment of taxes by plaintiff's assignor.

Afterwards, on the — day of ——, this cause coming on for hearing, the same was submitted to the court on the pleadings and the following agreed statement of facts and evidence, to wit:

Agreed Facts. Filed April 2d, 1879.

STATE OF IOWA, } ss:
County of Webster, }

In the District Court of said County.

E. K. GOODNOW *vs.* JOSIAH B. PLUMBE *et al.*

17 For the benefit of all parties to this suit it is hereby stipulated and agreed as follows:

It is admitted that the facts set forth in the first, second, and eighth paragraphs of plaintiff's original petition are true.

It is further admitted that prior to the year 1864 and till the year 1873 the defendant, Josiah B. Plumbe, was the owner in fee simple of all the lands mentioned in the petition; that after that time and before the commencement of this suit said defendant sold and conveyed to innocent purchasers for value all of said lands, except the southeast quarter of the northwest quarter and west half of the southwest quarter of section 35, township 89, and range 27, in said Webster county, of which last-named land he is still the owner.

It is further admitted that the said county of Webster duly and legally levied and assessed upon the lands aforesaid for the years named the several amounts of taxes set forth in Exhibit A, hereto annexed and made part of the agreement.

It is further admitted that said several assessments of said lands were made by said county to unknown owners.

It is further admitted that the said Iowa Homestead Company gave or delivered over to the said county the several amounts of taxes mentioned in said Exhibit A at the several dates therein set forth and took from said county receipts for the sums of money so handed over; that at the time said money was given to said county said homestead company did not know or believe that said defendant was the owner of said lands; that said several taxes were so handed over without any actual demand therefor by said county; that said defendant has never paid said taxes to said county or any part thereof, unless the payments made by said homestead company constitute a payment for the benefit of defendant.

It is admitted that said county has always hitherto refused to refund to said homestead company or to said Goodnow the taxes delivered over to said county as aforesaid.

18 It is further admitted that in the year 1863 said defendant Plumbe was, and has been continuously ever since then, a non-resident of the State of Iowa.

It is further admitted that three-eighths of the taxes so delivered over by said homestead company to said county were levied and assessed by said county upon the southeast quarter of the northwest quarter and the west half of the southwest quarter of section 35, township 89, and range 27, in said Webster couuty; that all of said taxes were handed over by said Iowa Homestead Company to said county without any previous request from the said defendant and by mistake as to the true ownership of said lands, but in good

faith and under the belief of ownership, as alleged in the first, second, and third paragraphs in the petition.

These facts are admitted for the purpose of the trial of this suit and nothing else.

Signed this — day of March, A. D. 1879.

GEORGE CRANE,
Attorney for Plaintiff.
D. B. HENDERSON,
Attorney for Defendant.
J. F. DUNCOMBE,
Attorney for County.

EXHIBIT A. Referred to and made part of the agreed statement of facts.

For 1864	$54 44
For 1865	81 45
For 1866	102 79
For 1867	21 42
For 1868	95 98
For 1869	116 99
For 1870	129 76
For 1871	171 58

19 The plaintiff then read in evidence the following agreement as to facts:

It is hereby agreed and admitted that the county of Webster, State of Iowa, in the usual and formal manner levied and assessed upon the lands mentioned in plaintiff's petition for the years named the several amounts of taxes set forth in Exhibit A, attached to the agreed state- of facts, signed by D. B. Henderson, and filed in this cause April 2d, 1879, and said several assessments were made by said county to unknown owners. This is not a concession that the lands were subject to taxation for said years, and it is agreed that the Iowa Homestead Company delivered or paid the said several amounts to said county at the dates named in said Exhibit A, and that defendant has always been a non-resident of Iowa since 1860.

Signed this — day of August, A. D. 1882.

THEO. HAWLEY,
Defendant's Attorney.

It is hereby stipulated and agreed that the reports of the cases of the Dubuque & Pacific Railroad Company *vs.* Edwin C. Litchfield, 23 Howard, 66, and the Iowa Homestead Company, *vs.* The Des Moines Valley Railroad Company, 17 Wallace, 153, as therein reported, shall be received as evidence and considered by the court as far as material to any of the issues herein.

It is further agreed, for the purpose of the trial of this suit, that the said J. B. Plumbe was a party defendant to the said suit of the Iowa Homestead Company *vs.* The Des Moines Valley Rail-
20 road Company *et al.*, in 17 Wallace, 153, and stood in the same situation therein as the defendant, Edwin C. Litchfield.

The plaintiff then read in evidence the following affidavit and stipulation:

21 I, George Crane, being first duly sworn, depose and say that I am the attorney for the plaintiff in the above-entitled suit; that on or about the first day of July, A. D. 1880, I made and entered into an agreement as to the facts in said suit, wherein is contained the following paragraph or stipulation, to wit:

"It is further agreed for the purpose of the trial of this suit that the said J. B. Plumbe was a party defendant to the said suit of the Iowa Homestead Company *vs.* The Des Moines Valley Railroad Company *et al.*, in 17 Wallace, 153, and stood in the same situation therein as the defendant, Edwin C. Litchfield."

That on examination of the record I have discovered that said Plumbe was not a party defendant to said suit in 17 Wallace, 153, either directly or indirectly; that at the time of making said agreement as to facts I understood Mr. Theo. Hawley, attorney for said Plumbe, to say that one Edward Wade was a party defendant to said suit in 17 Wallace, 153; that during the pendency thereof he held the legal title to the lands mentioned and described in plaintiff's petition in this suit; that said Wade, holding the legal title as aforesaid, represented and acted for the said Plumbe in defending said suit in 17 Wallace, 153; that while under the impression that the foregoing statements were correct, as understood by me, I made and entered said stipulation; that I would not have done so but for such impression or belief.

That I now find said stipulation to be wholly untrue; that said Wade, in fact, was not a party to said suit and did not hold the legal title to said lands at any time during the pendency thereof; that, on the contrary, he sold and conveyed the aforesaid lands to Edward B. Wesley, by a quitclaim deed, on the 23d day of Mar., A. D. 1865, which deed is on record in Book M, p. 391, of the Webster Co. real estate records; that said Wade and said Wesley both held the legal title to said lands in trust for the use and benefit

22 of said Plumbe; that said stipulation was a result of a mistake of facts on the part of this affiant and would not have been made but for such mistake; and further affiant saith not.

GEORGE CRANE.

Subscribed and sworn to before me this 28th of July, 1881.

THEO. HAWLEY,
Notary Public.

FORT DODGE, *July* 20, 1881.

It is hereby stipulated and agreed that the within affidavit may be read in evidence at the trial of Goodnow *vs.* Plumbe as a deposition of affiant, subject to defendant's objection as to the competency or materiality of said affidavit, and subject to the cross-examination of said affiant upon the trial of said cause.

THEO. HAWLEY,
Defendant's Attorney.
GEORGE CRANE,
Attorney for Plaintiff.

Plaintiff then read in evidence the following assignment:

This agreement witnesseth that in consideration of the covenants and agreements hereinafter mentioned and to be kept, observed, and performed by E. K. Goodnow, of the city and State of New York, the Iowa Homestead Company, a corporation duly organized and existing under and by virtue of the laws of the State of Iowa, has assigned, transferred, conveyed, and set over unto the said E. K. Goodnow all right, title, claim, or demand or cause of action,
23 either in law or equity, which said homestead company may have against Webster county, State of Iowa, or against any person, company, or other corporation on account of or by reason of the payment to said county of any taxes assessed or levied by said county upon lands situated within the territorial limits thereof and in which said homestead company heretofore claimed to have an interest, and especially all claims, demands, and rights of action, in law or equity, which said homestead company may have or hold against any person, company, county, or other corporation by virtue of said homestead company having paid or handed over to said Webster county the taxes assessed or levied by said county upon the lands or any part thereof formerly claimed by the Dubuque and Sioux City Railroad Company as part of the land grant made by Congress to aid in the construction of its railroad, but which was finally adjudged by the courts to be no part of said grant.

In consideration whereof the said E. K. Goodnow hereby agrees to exercise reasonable care and diligence to enforce said claims, demands, or rights of action, and, after deducting all costs and expenses incurred in so doing, to hold the proceeds or amount collected in trust for the use and benefit of the parties owning the same.

Signed by the respective parties hereto.

In witness whereof the Iowa Homestead Company hereunto affixes its seal and causes these presents to be signed by its president and attested by its secretary this 14th day of June, 1876.

MASON THOMPSON,
President pro Tem.

[SEAL.] J. B. DUMONT, *Secretary.*

24 STATE OF NEW YORK, *New York City and County:*

On this 14th day of June, A. D. 1876, before me, a commissioner for Iowa in and for said county, personally came Mason Thompson, president *pro tem.*, and J. B. Dumont, secretary and treasurer, of Iowa Homestead Company, to me personally known to be the identical persons whose names are affixed to the foregoing instrument as grantors, and acknowledged the same to be the voluntary act and deed of the Iowa Homestead Company, by order of the board of directors.

Witness my hand and official seal.

[SEAL.] JNO. A. HILLERY,
A Commissioner for the State of Iowa in New York City.

25 Defendant then read the deposition of J. B. Plumbe, the defendant, as follows:

I reside in the town of Niagara, in the province of Ontario. I have been the owner of all the lands named in the petition. I purchased them from the Des Moines Navigation and Railroad Company about the year 1859; they were conveyed by me to Edward Wade, as my assignee, in 1861; sold under an arrangement with me in 1865, at public auction, to Edward B. Wesley, of New York, who bid them off for me and for my sole benefit, conveyed to Wesley by deed from Wade, as such assignee (which deed is dated March 23d, 1865), and held by Wesley for me and for my sole and absolute benefit, until he conveyed them to me by deed dated June 12th, 1873; my interest continued during all the time they were held by Wade, and during all the time subsequent to the aforesaid sale and the purchase by Wesley, until the year 1873. I was the sole and absolute owner of the said lands in the year 1873, and afterwards I sold some portion of them.

In 1861 I conveyed the said lands by quitclaim deed to Edward Wade, as my assignee, to whom I had previously made an assignment for the purpose of securing the Bank of the Interior for my indebtedness and further purposes, the said lands being conveyed by that assignment.

The said Edward Wade, as such assignee, conveyed the said lands to the before-named Edward B. Wesley by deed dated March 23d, 1865.

I do not know when the said deed was delivered by Wade to Wesley.

Under an arrangement made by myself and the said Wesley on my behalf for the settlement and full discharge of my indebtedness to the Bank of the Interior before mentioned and by my consent the said lands were sold at public auction, in the city of
26 Albany, on the 23d day of March, and struck off to the said Wesley, as the highest bidder, for the sum of $210. The said Wesley bought the said lands for my sole use and benefit at the time and for the sum above mentioned. The purchase-money, being the said $210.00, was paid by me immediately subsequent to the said sale, and the said Wesley never thereafter had any claim or lien upon the said lands, I being the sole owner thereof from the date of the sale until the year 1873, as stated in my answer to interrogatory two.

I was notified by my agent, Benjamin Grayson, then residing at Fort Dodge, in or about 1868, but the suit mentioned in this interrogatory—that is, the suit brought by the Iowa Homestead Company against the Des Moines Navigation and Railroad Company and its grantees, among whom was Edward Wade, to try and determine the title to what are known as the Des Moines river lands in Webster county, Iowa—had been commenced by the Iowa Homestead Company against Wells, Litchfield, McAlpine, Chapman, Tracy, and others, including the before-named Edward Wade, in whose name the before-named lands stood in Webster county records, although they then absolutely belonged to me.

The said Grayson advised me that the object and purpose of the suit were to establish on the part of the homestead Co. a title to certain

lands near the Des Moines river, among which were those described in the petition of plaintiff, and that as to those lands then standing in the name of Edward Wade, J. M. Ellwood, of Des Moines, was instructed to take proper steps to appear and to apply to remove the case and then to defend the action. I authorized the said Ellwood to appear and instructed the said Grayson to pay the said Ellwood a retainer of $50 in the suit against the said Wade for my account, and to charge my account therewith, and also to pay and charge to my account any further costs and charges that accrued by
27 reason of the said Wade. I am not able to state how much was so paid, but it was whatever was apportioned to or justly claimed as the portion chargeable against the said lands, and I paid a charge of one hundred dollars against me in the said Grayson's account for *pro rata* expenses in defending suit in United States Circuit Court *vs.* Homestead Company, which I paid in 1872.

I have stated, in reply to int. 5, that I paid $50 for retainer fee and $100 for cost in the suit therein mentioned, being advised by the said Grayson that those sums were apportioned to the lands hereinbefore named then standing in the name of Wade, but absolutely belonging to me.

The interests I have in the matter in controversy were whatever might be or were involved therein in regard to the lands heretofore mentioned, I being then the sole owner of the said lands.

Certain ejectment suits were commenced against squatters on said land before April 17th, 1868, under the name of said Wade, in my behalf, and were continued in that form in pursuance of the advice of my attorneys.

The foregoing is all the evidence given or offered by the parties at the trial of said suit.

EDWARD K. GOODNOW
vs
JOSIAH B. PLUMBE. } No. 1845.

This cause coming up for final hearing this 2d day of Oct., A. D. 1883, and the same having been duly argued by counsel and considered by the court, the court finds that the plaintiff, Edward K. Goodnow, is entitled to recover of the defendant, Josiah B. Plumbe, the sum of eleven hundred sixteen $\frac{70}{100}$ dollars ($1,116.70), being the principal sum paid and interest thereon only from the com-
28 mencement of this suit, and further finds that plaintiff is entitled to a lien on the following-described lands—that is to say, north half and southwest quarter, section three, township eighty-seven, range twenty-eight; southeast quarter of northwest quarter, west half southwest quarter, section thirty-five, township eighty-nine, range twenty-seven; northeast quarter of southwest quarter and north half of southeast quarter, section nine, township eighty-seven, range twenty-seven, all in Webster county, Iowa, being lands described in the petition, to secure the payment of said claim, but finds and decides that each forty acres of said lands is liable only for the taxes levied and assessed thereon.

It is therefore ordered and decreed that plaintiff have and recover of and from the defendant the said sum of eleven hundred sixteen and $\frac{70}{100}$ dollars and costs of suit, taxed at —.

It is further decreed that sixty-two and $\frac{3}{100}$ dollars of the sum above found due be, and is hereby, made a special lien on each forty acres of the land above described from the 28th day of April, 1873, and that a special execution be issued and the lands above described be sold thereunder in accordance with this decree and the provisions of law, and in the event said lands do not sell for enough to pay said claims, interest, and costs of suit that plaintiff have a general execution to make such balance.

To which several rulings both parties excepted.

29 *Assignment of Errors.*

1. The court erred in not computing interest from time of payment of taxes to the county.
2. The court erred in not giving plaintiff a lien on all the land for all the taxes.
3. The court erred in not giving plaintiff the whole relief prayed for.

GEORGE CRANE,
Attorney for Plaintiff.

30 *Opinion of Supreme Court of Iowa.*

GOODNOW *vs.* PLUMBE.

Appeal from Webster district court.

FRIDAY, *October* 24, 1884.

The plaintiff, as assignor of the Iowa Homestead Company, brings this action to recover for certain taxes paid for the use and benefit of the defendant Plumbe. The court rendered a judgment for the taxes paid, but allowed interest only from the time of the commencement of the action and allowed a lien upon each tract of forty acres for only the taxes paid upon that tract. Both parties appeal, the plaintiff perfecting his appeal first.

George Crane, for appellant; Theodore Hawley, for appellee.

ADAMS, *J.:*

Where taxes are paid by a person upon another person's land under such circumstances as to give a right of recovery for the taxes paid the person paying the taxes is entitled to recover interest at the rate of six per cent. per annum from the time of payment and is entitled to a lien for the whole amount paid upon the whole land. Goodnow *vs.* Litchfield, 63 Iowa, 275. This disposes of the questions raised by the plaintiff's appeal.

The defendant pleaded that the question as to the right of recovery of the taxes was determined adversely to such right in the case of the Iowa Homestead Co. *v.* Des Moines Valley R. Co. *et al.*, 17 Wall., 153. It is not claimed that Plumbe was a party to the

record in that action, but an agreement was entered into by counsel in this action substantially to the effect that Plumbe is to be
31 treated as if he were a party to that action. The agreement, however, before it was acted upon, was repudiated by the plaintiff's counsel upon the ground that it was induced by a mistake of fact, and the evidence introduced shows, we think, such mistake. In our opinion the plaintiff was not bound by the agreement.

It is claimed, however, by the defendant that, aside from the agreement, he ought to be deemed as virtually a party to that adjudication and entitled to the benefit thereof.

It appears that at one time one Wade held the legal title to the land upon which the taxes were paid. In the action brought by the Iowa Homestead Co., plaintiff's assignor, in which these taxes were claimed, Wade was named in the petition as defendant, among others, presumably upon the theory that the taxes claimed as paid upon this land were recoverable by the company from him. Plumbe employed counsel and caused an answer to be filed by Wade, and, as the decision was against the homestead Co., Plumbe claims the benefit of the decision.

If Wade had become a party to that action and the circumstances had been such that if Wade had been compelled to pay the taxes Plumbe would have been liable to respond to him, then it may be conceded that a successful defense made by Plumbe, ostensibly in Wade's behalf, would entitle Plumbe to the benefit of the adjudication.

But we are not able to discover that Wade became a party to the action. It is not shown that notice was served upon him or that he appeared either by himself or by attorney authorized to appear for him. The answer filed ostensibly for him it is shown affirmatively was filed by Plumbe's procurement and at his expense. Had a judgment under such circumstances been rendered for the
32 taxes paid against Wade it would, we think, have been void for want of jurisdiction of the person of Wade; for the same reason we think that a judgment nominally in his favor must be regarded as void.

There never was, as we understand, any reason for making Wade a party to that action. The taxes, it appears, were due from Plumbe alone. Judgment for the taxes had been rendered against Plumbe, and, we think, correctly, and we do not see how if he was liable Wade could be. Plumbe's defense, then, in the Homestead case in Wade's name could not entitle him to the benefit of that adjudication. A question of precisely this character was determined in Goodnow *v.* Litchfield, above cited. See fifth division of the opinion. We think that the judgment must be reversed upon the plaintiff's appeal and affirmed upon the defendant's appeal.

33 *Judgment of Supreme Court of Iowa.*

EDWARD K. GOODNOW *vs.* JOSIAH B. PLUMBE.

This cause coming on to be heard this 11th day of Dec., A. D. 1884, the parties appearing by the respective attorneys, and the court, having duly considered the issues, the evidence, and the arguments of counsel, finds the issues in favor of the plaintiff.

It is therefore ordered, adjudged, & decreed that the plaintiff, Edward K. Goodnow, have & recover of & from the defendant, Josiah B. Plumbe, the sum of fourteen hundred & fourteen & $\frac{96}{100}$ dollars & interest thereon from the thirteenth day of March, 1883, at the rate of six per cent. per annum, & costs of suit, taxed at one hundred fifty-six & $\frac{70}{100}$ dollars, and that this decree be, & is hereby, made a special lien on the following-described lands: The north half
34 of the southwest quarter of section three, in township eighty-seven, range twenty-eight; the southeast quarter of the northwest quarter & the west half of the southwest quarter of section thirty-five, in township eighty-nine (89), range twenty-seven (27); the northeast quarter of the southwest quarter & the north half of the southeast — of section nine (9), in township eighty-seven (87), range twenty-seven (27), *are* in Webster county, State of Iowa, from the 28th day of April, A. D. 1873; that the plaintiff have a special execution; that the lands aforesaid, or so much thereof as may be necessary, be sold thereunder according to law, and that the said defendant and all persons claiming by, through, or under him be forever barred & foreclosed of & from all right and equity of redemption in & to said lands and every part thereof.

35 *Supplemental Decree or Certificate.*

Supreme Court of Iowa. December Term, 1884.

EDWARD K. GOODNOW, Pl'ff, *vs.* JOSIAH B. PLUMB, Def't.

And now, on the application of the defendant, Josiah B. Plumb, it is certified by the court here and ordered to be made part of the record herein that by *by* the answer of defendant and in defendant's assignment of errors and on the hearing in said cause the defendant claimed immunity from the entire demand and claim of plaintiff on the ground that, as was claimed, the same demand and claim had been adjudicated against plaintiff's assignor, the Iowa Homestead Company, by the Supreme Court of the United States in the case of Iowa Homestead Company against The Des Moines Navigation
36 & Railroad Company and others, at the October term thereof, A. D. 1872, at which case it was claimed that the said Josiah B. Plumb, though not named as such in the record, was a party defendant in such sense as to have been found by and entitled to the benefit of the adjudication therein, and that our decision herein was and is against the immunity so claimed.

And it is further certified and ordered to be made a part of the record herein that by defendant's answer and on the hearing in said cause defendant claimed immunity from said entire claim and de-

mand because, as was alleged and claimed, the alleged cause of action not having accrued within six years immediately preceeding the commencement of this action the same was barred by the statutes of limitations of the State of New York, and that to determine whether or not it was so barred it became material and nec-
37 essary to decide whether or not the decision of the Supreme Court of the United States in the case of Samuel G. Walcott against The Des Moines Navigation & Railroad Company, reported in 5 Howard, 681, was a final determination of the question therein decided, in order to determine when the plaintiff's cause of action accrued, and that our decision herein was and is that said decision was not a final determination of said question and was and is against the immunity so claimed because of our said decision that said determination was not final.

STATE OF IOWA, *ss:*

I, G. B. Pray, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a true and correct transcript of final judgment and decree and supplemental decree entered in said court in the case of Edward K. Goodnow *vs.* Josiah B. Plumbe as full, true, and complete as the same remain of record in my office.

Witness my signature and official seal this 13th day of Sept., 1887.

[Seal of the Supreme Court of Iowa.]

G. B. PRAY,
Clerk Sup. Court of Iowa.

[Endorsed:] 10770. Goodnow *v.* Plumb.

38 It is hereby agreed that the foregoing, together with pages from 8 to 37½, both inclusive, in the case of Edward H. Litchfield, executor of Edwin C. Litchfield, deceased, plaintiff in error, *vs.* George Crane, administrator of Edward K. Goodnow, deceased, defendant in error, No. 670, constitutes the entire record herein, and that the cause is to be submitted thereon; it is further agreed that all the evidence contained in the agreed printed transcript or record in the above-named case shall be treated as part of the record in this case as far as relevant, and not including the amounts of taxes paid.

GEORGE CRANE,
Att'y for Def't in Error.
C. H. GATCH,
Att'y for Plaintiff in Error.

Endorsed on cover: Sup. Court U. S. 1887. Oct'r term. No. 350. J. B. Plumb, pl'ff in error, *vs.* George Crane, adm'r, &c. Agreed record.

[Stamped:] Office Supreme Court U. S. Filed Oct. 5, 1887. James H. McKenney, clerk.

123-560
123-560

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1887.

NO. 350.

JOSIAH B. PLUMBE, *Plaintiff in Error.*

vs.

GEORGE CRANE, Administrator of GOOD-NOW, *Defendant in Error.*

On Error From The Supreme Court of Iowa.

C. H. GATCH, for Plaintiff in Error.

GEORGE CRANE, for Defendant in Error.

ARGUMENT FOR DEFENDANT IN ERROR.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1887.
NO. 350.

JOSIAH B. PLUMBE, *Plaintiff in Error.*

vs.

GEORGE CRANE, Administrator of GOOD-NOW, *Defendant in Error.*

On Error From The Supreme Court of Iowa.

C. H. GATCH, for Plaintiff in Error.

GEORGE CRANE, for Defendant in Error.

ARGUMENT FOR DEFENDANT IN ERROR.

STATEMENT.

The facts in this case are substantially the same as in case number forty-three on the present docket. The following circumstances appear in this case however that do not in latter case:

Mr. Plumbe was not a party to the record in the Homestead suit, but, paid his proportionate share of the expenses incurred on the part of the defense. He received his lands from the Des Moines Navigation & Railroad Company in 1859, and in the year 1861 conveyed the same to one Edward Wade for the purpose of securing a debt due to the Bank of the Interior. By deed dated March 1865, Wade, as trustee, (Plumb's debt having been paid,) conveyed the lands to one Wesley, who thereafter held the same for the sole use and benefit of Plumbe.

In 1868 when the Homestead suit was commenced the lands stood on the county records in Webster county, Iowa, in the name of Wade, who for that reason was named as a defendant in the petition in that suit. The records fail to show any notice to him of the pendency of the suit. Plumbe being made aware by his agent of the commencement of the suit, by the Homestead company, employed an attorney to appear and file an answer in the name of Wade. For the foregoing facts see deposition of Plumbe, (Record, page).

ARGUMENT.

1. The Supreme Court of Iowa in disposing of the matter of former adjudication said (Record):

"It appears that at one time Wade held the legal title to the land upon which the taxes were paid. In the action brought by the Iowa Homestead company, plaintiff's assignor, in which these taxes were claimed, Wade was named in the petition as defendant among others presumably upon the theory that the taxes claimed as paid upon this land were recoverable by the company, from him. Plumbe employed counsel and caused an answer to be filed for Wade; and, as the decision was against the Homestead company, Plumbe claims the benefit of the decision."

"If Wade had become a party to that action, and the circumstances had been such that if Wade had been compelled to pay the taxes, Plumbe would have been liable to respond to him, then it may be conceded that a successful defense made by Plumbe, ostensibly in Wade's behalf, would entitle Plumbe to the benefit of the adjudication."

"But we are unable to discover that Wade became a party to the action. It is not shown that notice was served upon him, or that he appeared, either by himself, or by attorney authorized to appear for him. The answer filed ostensibly for him, it is shown affirmatively was filed by Plumb's procurement and at his expense. Had a judgment, under such circumstances been rendered for the taxes paid, against Wade, it would we think have been void, for want of jurisdiction of the person of Wade. For the same reason we think that a ujdgment nominally in his favor must be regarded as void."

The position taken by the Supreme Court of Iowa in the above extract we think is fully sustained by the ruling of this court in the case of Sheldon vs. Tiffin, 6 How. 163. See also Thompson vs. Whitman, 18 Wall. 464.

Furthermore the implied contract sued upon in the Homestead suit and set out in the petition was necessarily a contract with Wade and not with Plumbe. For the purpose of recovering in that suit, the ownership of the land was declared to be in Wade. Of course, without proof of this allegation of ownership no recovery could have been had. In the suit at bar the contract sued upon is one made with Plumbe and the ownership of the land is declared to have been in him. A failure to recover in the former suit was simply a failure to establish a contract with Wade. But such failure is clearly no adjudication of a right founded upon a contract with Plumbe. In defending the suit in the name of Wade, Plumbe simply defeated

a claim founded upon an alleged contract with Wade, and showed that Wade made no such contract. Of course this was no adjudication of Plumbe's liability on a contract alleged to have been made with him.

2. In the next place it is claimed that Plumbe paid his proportionate share of the expenses of defending the Homestead suit, and is for that reason entitled to the benefit of the decision rendered therein. Now, it is well settled law, that no person can have the benefit of an adjudication in an action except the parties thereto or their privies.

Biglow on Estopple 4th Ed. 98 and 324 and cases cited.
Kerr vs. Watts, 6. Wheaton 552.
Railroad Co. vs. National Bank, 102. U. S. 35.

Plumbe was neither a party nor in privity with any party to the Homestead suit. He paid his share of the expenses of defending the suit, simply because he was interested in similar questions of law and fact. He had no other interest whatever, and if defaults had been taken and judgments entered up against all the defendants, neither his rights, nor his liability would thereby have been adjudicated. Any judgements against the defendants therein, would have been *only* for the taxes paid upon their lands respectively, and could not possibly have been for the taxes paid upon lands owned by Plumbe.

To have recovered as against him in that suit it would have been necessary to prove his ownership of the lands and the payment of the taxes thereon. As the pleadings stood evidence of these essential facts would have been entirely inadmissible. None of the defendants were liable for the taxes

levied upon his lands and hence they could and would have excluded all evidence pertaining thereto.

Again, it is a fundamental principle of law, that a judgment in order to constitute an estoppel, must be mutual in its operation, that is to say, it will operate as an estoppel in behalf of one party only, where if it were rendered the other way it would operate against him. There can be no pretense that if the decision of the court in the Homestead suit had been the other way, any decree could have been entered binding upon Plumbe. The main facts upon which his liability depended that is his ownership of the lands and the payment of his taxes thereon, were in no sense in issue in that suit, and could not have been tried or adjudicated in such manner as to estop him from contesting them in a subsequent suit. As he could not have been estopped by that litigation, he cannot claim the benefit of an estoppel as against the other party, the Homestead company.

Again, if simply contributing a proportionate share of the expenses of resisting a law suit, will entitle a person to claim the benefit of an estoppel by judgment, it follows that a plaintiff in a suit may have his rights adjudicated against him without being aware of the necessity of adducing evidence to maintain them. The plaintiff in an action has no means of knowing, who besides the defendant's of record, are going to share in defraying the cost of resisting his action. Under such circumstances it would be a strange rule of law that would estop the plaintiff from asserting his rights in a subsequent suit, merely because out-side parties have paid or contributed a share of the expenses of the defense. In Bigelow on Estop-